

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

August 3, 2006

A meeting of the Board of Environmental Protection was held on Thursday, August 3, 2006 at the Holiday Inn / Ground Round, Augusta, Maine. Chairman Matt Scott called the meeting to order at 8:30 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, M. Wing Goodale, Donald Guimond, Richard Gould, Ernest Hilton, Virginia Plummer, Matt Scott, and Nancy Ziegler.

**Absent:** Nancy Anderson and Denis Culley

<b><u>Staff:</u></b>	Bureau of Land and Water Quality	Mark Stebbins
	Bureau of Land and Water Quality	Andy Fisk
	Bureau of Land and Water Quality	David Courtemanch
	Bureau of Air Quality	Jeffrey Crawford

**Others :** David P. Littell, Commissioner  
Dennis Harnish, Assistant Attorney General  
Cynthia S. Bertocci, BEP Executive Analyst  
Terry Hanson, Administrative Assistant

***(Meeting adjourned at approximately 5:00 p.m.)***

## I. DEPARTMENTAL

### A. COMMISSIONER'S COMMENTS:

Solid Waste: The Blue Ribbon Commission conducted its first meeting on August 1<sup>st</sup> and spent time reviewing potential topics for future consideration. Some of those topics were: 1) public benefit determination; 2) definition of commercial landfill; 3) volumes and types of wastes – including amounts exported and imported - along with volumes disposed of at various Maine facilities; 4) host community benefits including research on what is done in other states; and 5) landfills and incineration facilities. The Department is seeking additional clarification related to the Commission's research needs. The Commission has indicated a desire for disposal information for solid waste, municipal solid waste, construction demolition debris, and hazardous waste. Additionally, Commissioner Littell noted that a letter from the Board communicating its thoughts regarding the solid waste issue would be timely.

Chemical Usage: Members of the Governor's task force to investigate safe chemical usage have been identified. This task force is charged with recommending alternatives to household use of chemicals in an effort to reduce human exposure. It will strive to identify an approach that would work for Maine. Acknowledging that Maine is a small State with limited resources, it is likely that the task force will examine initiatives in other states before identifying a specific direction for Maine. The task force anticipates conducting its first meeting sometime in August.

Mercury: The US Environmental Protection Agency's (EPA) Clean Air Mercury Rule was rolled out. Maine believes this new rule violates section 111 of the Clean Air Act, which requires that mercury be treated as a toxic air pollutant. This new rule allows for mercury trading. Maine may be required to adopt some version of this rule; however, we are consulting with the Attorney General's Office. If we decline to adopt the rule, we may be subject to an imposed Federal Implementation Plan.

Board member M. Wing Goodale asked if other states would take the same approach and decline to adopt the rule?

*Commissioner Littell explained that the Department does not know what other States intend to do, but he plans to communicate with them on this matter.*

Gulf Island Pond: The Department annually does a fly-over of the Gulf Island Pond area to monitor for algae blooms. Early signs of a bloom maybe present and the Department's scheduled fly-over will be conducted tomorrow to further evaluate.

BEP Jurisdiction: The Department has received a request for Board jurisdiction of the Maine Central Railroad variance application; however, no determination for recommendation has been made at this time. The Commissioner noted that this request involves the same facility which is the subject of a consent agreement before the Board today; however, the issues differ.

- B. **CHAIRMAN'S COMMENTS:** Chairman Scott introduced Assistant Attorney Dennis Harnish to provide a brief summary of a recent court case.

Save Our Sebasticook vs BEP: The Board's Order supporting removal of the Fort Halifax dam was appealed to Superior Court. (FERC had also authorized removal of dam. Under the terms of its license, FPLE was required to provide fish passage. Fish passage could be achieved through dam removal or the installation of fish passage devices). A point of contention argued before the court by the plaintiff was the sufficiency of the findings of fact associated with the statutory criteria. The court supported the Board's findings explaining that the Maine Waterway Development and Conservation Act, while applying to new dams, could be used when considering the removal of existing dams. The judge agreed that using the Act to evaluate applications for dam removals was logical and none of the parties had opposed the use of the Act in this manner.

- C. **EXECUTIVE ANALYST COMMENTS:** None  
D. **BOARD CALENDAR:** Reviewed  
E. **DEPARTMENTAL ORDERS:** Reviewed  
F. **EXECUTIVE SESSION:** None

## II **CONSENT AGENDA ITEMS**

Board voted (8-0-0-2) on a motion to approve consent agenda items 1, 2, 3, 4, 5, 6, 7 and 8 as presented.

*Board members Elizabeth Ehrnefeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Denis Culley were absent.*

1. 7-ELEVEN, INC., Portland – Administrative Consent Agreement (BAQ)
2. PAGURKO BUILDERS, INC., Breman – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
3. PENOBSCOT MCCRUM, LLC, Belfast – Administrative Consent Agreement (BLWQ – Land)
4. TRACY BROTHERS CONSTRUCTION, Hancock – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
5. MJH-BGR, LLC, Bangor – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
6. FOGLIO and MCGOLDRICK BROTHERS BLASTING SERVICES, INC., Waterboro – Administrative Consent Agreement (BLWQ - Land)
7. TOWN OF BAR HARBOR, Bar Harbor – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
8. PENOBSCOT NURSING HOME ELRCARE MAINE, LLC, Penobscot – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

The Board voted (6-0-2-2) on a motion to approve the Administrative Consent Agreement and Enforcement Order for Maine Central Railroad Company as presented.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Virginia Plummer and Nancy Ziegler supported the motion. Board members Ernest Hilton and Matt Scott voted opposed. Board members Nancy Anderson and Denis Culley were absent.*

9. MAINE CENTRAL RAILROAD COMPANY, Embden – Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

### **III. Regular Agenda**

1. STATE IMPLEMENTATION PLAN (SIP) – REDESIGNATION OF PORTLAND and MIDCOAST 8-HOUR OZONE NONATTAINMENT AREAS to ATTAINMENT; SECTION 110 MAINTENANCE PLANS (approval)

Staff: Jeffrey S. Crawford, Bureau of Air Quality

The Board voted (8-0-0-2) on a motion to adopt proposed amendments to the State Implementation Plan for redesignation of Portland and Mid-Coast 8-hour ozone non-attainment areas to attainment, and Amendments to Section 110 Maintenance Plans. The vote was taken pursuant to 38 M.R.S.A. Section 341-D(1-B) and 585-A.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Denis Culley were absent.*

2. ANDROSCOGGIN RIVER APPEAL(s) // International Paper/Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; Livermore Falls Publicly Owned Treatment Works ME 0100315 and W 002654-5L-G-R; and Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (public hearing / notice to intervene)

Staff: Cynthia S. Bertocci, BEP Executive Analyst

Dana Murch, DEP Bureau of Land and Water Quality

The Board voted (6-0-1-3) on a motion to schedule a public hearing on the appeals of the Androscoggin River permits issued by the Department (International Paper/Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; Livermore Falls Publicly Owned Treatment Works ME 0100315 and W 002654-5L-G-R; and Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N) and establish a deadline for petitions to intervene. The vote was taken pursuant to 38 M.R.S.A. 341-D(4) and 06-096 CMR Chapter 2.

*Board members Elizabeth Ehrenfeld, Richard Gould, Donald Guimond, Virginia Plummer, Matt Scott and Nancy Ziegler voted to support the motion. Board member M. Wing Goodale abstained. Board members Nancy Anderson, Ernest Hilton and Denis Culley were absent.*

**BOARD CONDUCTED A PUBLIC HEARING AT 10:00 A.M.**

Chapter 587, In-Stream Flow and Water Level Standards / New

Background Material Provided As Follows:

- > Water Quality Classifications
- > Definition of Non-consumptive Use

**WORK SHOP**

Solid Waste Blue Ribbon Commission

- > Discussion of draft letter to be sent to the Commission.

*Next Regular Board Meeting –Thursday, August 17, 2006 – Holiday Inn, Augusta*